BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	:	
	:	
Petition of the Verizon Telephone	:	
Companies for Forbearance under	:	WC 04-440
47 U.S.C.§ 160(c) from Title II and	:	
Computer Inquiry Rules with Respect to	:	
Their Broadband Services	:	

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

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Dated: March 10, 2005

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I. INTRODUCTION AND SUMMARY

The National Association of State Utility Consumer Advocates (NASUCA)[1] herein submits its reply comments regarding Verizon's Petition for Forbearance from Title II and Computer Inquiry rules and regulations for its broadband services.[2] NASUCA is particularly interested in Verizon's Petition as it pertains to network neutrality and consumers' ability to use content, applications and equipment of the users' choice via Verizon's broadband network. In its Initial Comments, NASUCA addressed the importance of maintaining nondiscriminatory access to the Internet for consumers, and described how granting Verizon's Petition (and the similar petitions filed by BellSouth and Qwest[3]) would place those consumer interests at risk. The standard for forbearance established by Congress consists of a conjunctive three-pronged test[4] – one that Verizon fails in all three prongs. As NASUCA and other parties demonstrate, there is no angle from which one can view Verizon's Petition as (1) producing just and reasonable rates for broadband services; (2) protecting consumers; or (3) promoting the public interest. Recent discriminatory actions taken by network operators to block network access

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1 NASUCA is a voluntary association of 44 advocate offices in 41 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. *See* NASUCA Comments, at 1-2.

2 Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Their Broadband Services, WC Docket No. 04-440 (filed December 20, 2004)("Verizon Petition").

3 *See*, Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Title II Common Carrier Requirements, WC Docket No. 04-405 (field Oct. 27, 2004) ("BellSouth Petition"); *see also*, Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c), WC Docket No. 04-416 (filed Nov. 10, 2004)("Qwest Petition").

4 47 U.S.C. §160. Some parties refer to this statute as section 10 of the Telecommunications Act of 1996, 47 U.S.C. § 151, *et seq.*

to unaffiliated VoIP service providers underscore the *actual*, as opposed to hypothetical, concerns with lifting all Title II and Computer Inquiry regulations from ILEC broadband services. While it appears the FCC would prefer to enforce discriminatory activities on a case-by-case basis, forbearing ILEC broadband services from Title II regulations would eliminate the very rules the Commission would seek to enforce, thus opening the door to a variety of potential market power abuses by incumbent LECs.

Irrespective of Verizon's and other LECs' pleas for "deregulatory parity" with cable modem service, the current uncertainty surrounding regulation of cable modem service precludes the Commission from granting any such request until after the Brand X case has been decided and adequately considered. NASUCA urges the Commission to act in accordance with section 160, which leads to the inescapable conclusion that Verizon's Petition must be denied.

II. COMMENTS

A. Verizon's Petition Is Devoid Of Evidence That Would Allow The Commission To Grant Forbearance Under Section 160.

Neither Verizon nor its RBOC and ILEC brethren have presented evidence that would allow the Commission to grant Verizon's Petition. The underlying position taken by Verizon and other parties in support of Verizon's Petition is that since providers of cable modem service are not subject to Title II and Computer Inquiry regulations,[5] there is no basis for applying these regulations to ILEC broadband services. Yet this argument is not relevant to the statutory requirements for granting regulatory forbearance. The section 160(a) forbearance test requires conjunctive compliance with three requirements: Verizon must show that (1) the regulations are unnecessary to ensure just, reasonable and nondiscriminatory charges; (2) the regulations are unnecessary for the protection of consumers; and (3) the absence of the regulations is consistent with the public interest.[6] As NASUCA and other parties demonstrated in their initial comments, removing Verizon's broadband services from Title II and Computer Inquiry rules and regulations fails to satisfy any of these requirements.

1. The Presence Of A Single Intermodal Competitor For Mass Market Broadband Services Is Insufficient Basis For Concluding That Verizon's DSL Service Will Be Just, Reasonable And Nondiscriminatory In The Absence Of Regulation.

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5 Verizon Petition, at 9-11; SBC Comments, WC Docket No. 04-405, December 20, 2004 ("SBC BellSouth Comments"), at 5-6; Frontier Comments, at 1-2; Qwest Comments, at 8-11.

6 47 U.S.C. § 160(a).

As many parties acknowledge, cable modem service is the only actual competitor to ILEC broadband DSL service. Alternate broadband providers are not viable substitutes for cable modem and DSL service.[7] As NASUCA and others report, satellite and fixed wireless providers serve a combined 1.3% of the market for high-speed lines provided to residence and small business customers.[8] Broadband over Power Line (BPL) is not a commercial option at this time, nor is third-generation wireless broadband.[9] The Commission's own data support the fact that, for all the talk of the forthcoming presence of a "third pipe" into the home, none of these alternate providers yet fits that description, nor will they at any time soon.[10] It is unreasonable to remove Verizon's broadband services from *all* Title II and Computer Inquiry regulations based on the *possible* emergence of a "third pipe" whose benefits may or may not ever come to fruition.

As discussed at length by Earthlink, Verizon's argument addresses only *retail* competition with hardly any mention of *wholesale* competition.[11] If the Commission were to eliminate Computer Inquiry rules for ILEC DSL services, Verizon and other ILECs would be under no obligation to offer the underlying

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7 McLeod Comments, WC Docket No. 04-405, December 20, 2004 ("McLeod BellSouth Comments"), at 11.

8 NASUCA Comments, at 35; MCI Comments, at 7; McLeod BellSouth Comments, at 13; Vonage Comments, WC Docket No. 04-405, December 20, 2004 ("Vonage BellSouth Comments"), at 13.

9 McLeod BellSouth Comments, at 13-14; Washington Bureau for ISP Advocacy ("WBIA") Comments, at 22; Vonage BellSouth Comments, at 13.

10 *See* FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, High-Speed Services for Internet Access: Status as of June 30, 2004 (December 2004) ("High-Speed Service Report"); Fourth Report to Congress on Availability of Advanced Telecommunications Capability in the United States, 19 FCC Rcd 20540 (2004) ("Fourth Section 706 Report").

11 Earthlink Comments, at 6-8.

transmission service to alternate providers at nondiscriminatory rates, terms and conditions. As many parties have expressed, because of the lack of wholesale alternatives to the ILECs service offering, this would spell the end for DSL and Internet service provider (ISP) competitors,[12] leaving the incumbent LEC as the sole provider of DSL and ISP services to mass market consumers.

While Verizon and other ILECs claim that they will negotiate commercial agreements with competitive DSL and Internet service providers,[13] Verizon would have an unfair advantage during any such negotiations. Verizon's offer to negotiate would only be comforting if Verizon itself did not offer DSL and ISP connectivity in the retail market. Since it does, and since Verizon would be under no obligation to treat its competitors on equal terms and conditions as its own DSL affiliate, Verizon would have the opportunity and ability to discriminate against competitors. Verizon could, for example, restrict access to interconnection and exchange access arrangements, or raise prices for essential inputs, thereby creating a "price squeeze" that would drive competitors from the market.[14]

Rather than promoting vibrant competition for mass market broadband services, granting Verizon's Petition will create *at best* a DSL-cable modem duopoly,[15] wherein the two incumbent service providers will split the

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[12] Earthlink Comments, at 12; McLeod BellSouth Comments, at 18-19; CompTel/ASCENT Comments, WC Docket No. 04-405, December 20, 2004 ("CompTel/ASCENT BellSouth Comments"), at 6-7.

[13] Verizon Petition, at 22; BellSouth Petition, at 28.

[14] MCI Comments, at 11-12; McLeod BellSouth Comments, at 19-20; CompTel/ASCENT BellSouth Comments, at 9.

[15] Earthlink Comments, at 13-14; McLeod BellSouth Comments, at 11-12, 19. In those areas where either DSL or cable modem service is the only option, monopoly pricing incentives are likely to

market and share the excessive rents demanded by duopolists. If left to their own devices, duopolists could engage in "tacit collusion,"[16] dividing the market and setting prices at comparable levels that are higher than would exist in an effectively competitive market. As in a monopoly market, a duopoly market does not lead to an efficient market outcome,[17] and, all else being equal, prices charged to consumers will be higher than they would be in a competitive market. By definition, duopoly markets do not produce just and reasonable rates. Verizon's Petition therefore fails to satisfy the first prong of the section 160(a) forbearance test.

2. Current Limited Levels of Competition Are Insufficient To Ensure The Protection Of Consumers In The Absence Of Title II And *Computer Inquiry* Regulations For ILEC Broadband Services.

Many commenting parties agree that granting Verizon's Petition will result in less competition, not more, which will directly harm consumers. After the wholesale DSL market dries up, competitive ISPs will have few, if any, options for providing services to consumers. These competitors will obviously suffer from such deregulatory action, and consumers will suffer, too. Deregulating ILEC broadband services will create an unregulated duopoly market structure for mass market broadband services, which will not only harm consumers via unjust and

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take hold – and the absence of Title II regulations will limit any regulator from taking necessary corrective actions.

16 *See* MCI Comments, at 7, footnote 14.

17 CompTel/ASCENT BellSouth Comments, at 11-12, 15-16; WBIA Comments, at 7, 15; Vonage BellSouth Comments, at 15-16; McLeod BellSouth Comments, at 21-22, *citing*, *inter alia*, Brooke Group v. Brown & Williamson, 509 US 209, 227 (1993) and FTC v. Heinz, 246 F.3d 708, 725 (D.C. Cir. 2001).

unreasonable rates, but will have a potentially more harmful and longer-reaching negative impact on consumers by inhibiting the type of innovation, such as VoIP, that has allowed the Internet to develop since its birth.[18]

The absence of Title II and Computer Inquiry regulations will provide ILECs with the incentive and ability to manipulate their customers' use of and access to the Internet. Following the likely rejection of Chairman Powell's voluntary "Net Freedoms"[19] by the remaining few broadband service providers, consumers will quickly be at risk of losing their ability to access Internet content, use Internet-based applications and attach the equipment of their choice. As discussed by Vonage, Verizon will have the ability and incentive to discriminate against competitors in favor of its own VoIP services and products. In response to Verizon's claim to the contrary, Vonage states,

> As a matter of fact, VoIP technology typically uses specific router ports that could be blocked by an underlying transport provider if it were so inclined. While there may be a number of countermeasures – the fact remains it is possible for an underlying broadband provider to impair a VoIP customer's ability to make calls – including 911 – without requiring constant monitoring or interference with the end user's bit stream.[20]

Discriminatory action by broadband providers is no longer theory, but reality. Earlier this year, Vonage initiated conversations with the FCC about alleged

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18 NASUCA Comments, at 24.

19 Chairman Powell has asked service providers to voluntarily adopt "Net Freedoms," which grant consumers the freedom to access content on the Internet, use Internet applications of their choice, and attach personal devices to the broadband network in their homes, as well as obtain service plan information. *See* NASUCA Comments, at 24-26.

20 Vonage Comments, at 7, responding to Verizon Reply Comments, WC Docket No. 04-405, January 28, 2005, at 21.

instances of "port blocking" by broadband service providers that have disrupted VoIP services provided by unaffiliated parties.[21] The FCC subsequently initiated an investigation into Madison River Communications LLC's compliance with Section 201(b), which requires, among other things, that common carriers' practices with respect to their interstate communications services be just and reasonable.[22] On March 3, 2005, the FCC took enforcement action against Madison River, which had been accused of blocking the VoIP service of as many as 200 Vonage customers.[23] Indications are that this is not an isolated incident: Senior FCC officials acknowledge that other VoIP providers have brought similar complaints to the Commission's attention.[24]

With regard to the FCC's action, Chairman Powell stated that, "[T]he surest way to preserve 'Net Freedom' is to handle these issues in an enforcement context where hypothetical worriers give way to concrete facts and -- as we have shown today -- real solutions."[25] Yet the FCC's ability to "preserve 'Net Freedom'" via "enforcement" depends upon the existence of enforceable rules and regulations. If the Commission grants Verizon's Petition, Verizon's broadband transmission services would no longer be subject to *any* Title II regulations (including Section

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21 "Vonage in 'Exploratory' Talks with FCC Over Port-Blocking Case," TR Daily, February 15, 2005.

22 Id.

23 "Phone Company Settles in Blocking of Internet Calls," The Washington Post, March 4, 2005, at E2; *see also,* In the Matter of Madison River Communications, LLC and Affiliated Companies, File No. EB-05-IH-0110, March 4, 2005.

24 Id.

25 FCC News, "FCC Chairman Michael K. Powell Commends Swift Action to Protect Internet Voice Services," March 3, 2005. The FCC-enforced "Net Freedom" referenced by Chairman Powell in this statement appears to be different than the voluntary "Net Freedom*s*" proposed earlier by the Chairman. *See*, footnote 19, *supra.*

201(b)), and would thus be beyond the reach of the FCC's enforcement regime. Although carriers may vow to refrain from such prejudicial conduct, NASUCA submits that adopting deregulatory measures for ILEC broadband transmission services with nothing more than a promise of nondiscriminatory practices and behavior is insufficient to protect consumers.

In addition, Vonage contends that carriers like Verizon possess market power in the provision of 911 services for VoIP service providers, even those providing service to customers accessing the Internet via cable modem service.[26] NASUCA continues to be concerned that the ability of VoIP and other providers to access 911 public service answering points (PSAPs) must be available to all voice providers, and required as a matter of public safety – both ordinary Local Exchange Carriers and VoIP companies. According to Vonage, if ILECs develop a solution to their own VoIP 911 problems, the Computer Inquiry rules would make the solution available to independent VoIP providers on a nondiscriminatory basis. Absent those rules, VoIP competitors will not likely be able to offer 911 services comparable to that of an ILEC VoIP offering, which will not only harm them in the marketplace but also keep them from achieving important public safety goals.

Without the Section 201(b) protections, Verizon will not only be able to funnel customers into its own VoIP service offerings, but it could also require the use of Verizon-affiliated portal services (like mapping services, news content, television listings, games), and Verizon equipment. Verizon would also be free to require the purchase of bundled services, including video programming, in a move

[26] Vonage Comments, at 5; Vonage BellSouth Comments, at 7-9.

to become the "all or nothing" communication service provider in its service region.[27] NASUCA submits that deregulation in the absence of effective competition will likely harm consumers in ways that may not yet be clear. There can be no question that it is the *presence* of regulations, not their absence, that will protect consumers from the market power abuses that can be wielded by carriers like Verizon until effective competition for mass market broadband services has developed.[28] Verizon thus fails the second prong of the section 160(a) forbearance test.

3. Granting Verizon's Petition Is Inconsistent With The Public Interest.

Given the conjunctive nature of the section 160(a) forbearance test and the fact that Verizon's Petition has failed to pass prongs one and two, Verizon's failure of the third "public interest" prong of the test is a foregone conclusion. ILECs responding to Verizon's Petition have failed to raise any basis for concluding that deregulation of broadband service is in the public interest, beyond their incorrect contention regarding the state of competition in that market.[29] NASUCA is concerned that maintaining net neutrality is also an important part of safeguarding the public interest and consumer benefits that consumers realize through the Internet. Contrary to SBC's assertions that Title II and Computer

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[27] Some parties allege that such anticompetitive tying arrangements exist today. *See* McLeod BellSouth Comments, at 17; Vonage BellSouth Comments, at 6-7.

[28] Even in the presence of effective competition for broadband transmission services, nondiscriminatory regulations with regard to 911 systems and services may still be necessary.

[29] Frontier does not even acknowledge the *existence* of the Section 160 forbearance test in its Comments.

Inquiry regulations "imped[e] full and fair competition in the broadband marketplace,"[30] as explained above, deregulation would enable Verizon to discriminate against CLECs and ISPs in the provision of DSL services, thereby reducing rather than enhancing competition. Granting Verizon's Petition would unquestionably reduce customer choice for connectivity to the Internet using ILEC DSL facilities; as Qwest itself acknowledges, "[r]educing customer choice is contrary to the public interest."[31] NASUCA could not have crafted a more succinct or accurate conclusion. Verizon's Petition fails the third prong of the section 160 forbearance test and must be rejected by the Commission.

B. The Petitions For Forbearance Filed By Verizon And Other ILECs Are Inappropriate Given The Current Regulatory Circumstances.

Verizon's Petition is both untimely and overly broad. While the purpose of Verizon's Petition is clearly to force the Commission's hand into taking action despite the existence of two open dockets addressing ILEC broadband regulation,[32] doing so is ill-advised. It cannot be denied that the "deregulatory parity" with cable modem service for which Verizon strives is itself in question, pending resolution of the Brand X[33] case. The Commission therefore should not consider Verizon's Petition to place cable modem and ILEC broadband regulation on

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30 SBC BellSouth Comments, at 13.

31 Qwest Comments, at 8.

32 *See Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) ("Non-Dominance NPRM"); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) ("Wireline Broadband NPRM").

33 Brand X Internet Services, Inc. v. FCC, 345 F.3d 1120 (9th Cir. 2003)(Brand X) *cert. granted*, 125 S.Ct. 655, 160 L.Ed.2d 494 (2004).

equal footing until Brand X has been resolved and evaluated. Yet, even if the Commission were to consider Verizon's Petition at the present time, the relief requested does not fit the hardship described.

1. Verizon's Request For "Deregulatory Parity" Cannot Be Addressed Until The *Brand X* Case Has Been Resolved And The Level Of Cable Modem Regulation Has Been Determined.

The issues raised in Verizon's Petition are not new. As many commenting parties note, the Commission has two open dockets addressing ILEC broadband regulation,[34] and has a full record of comments, reply comments and *ex parte* filings from many interested parties. The clear aim of Verizon's Petition is to establish "deregulatory parity" between DSL and cable modem service providers. If Verizon were solely interested in obtaining "regulatory parity" with cable modem service providers, then it would have applauded, rather than criticized, the Ninth Circuit's recent order overturning the FCC's finding that cable modem service is a Title I information service.[35]

Granting Verizon's Petition, only to have Brand X upheld by the Supreme Court, would simply reverse the present regulatory situation as between ILEC DSL providers and cable modem operators. As suggested by Vonage, the

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[34] Qwest Comments, at 2-3; SBC Comments, at 1; SBC BellSouth Comments, at 8-9; CompTel/ASCENT BellSouth Comments, at 2.

[35] Verizon Petition at 10 footnote 32.

appropriate course of action for the Commission is to consider the outcome of Brand X in conjunction with the information gathered in its prior proceedings relative to broadband regulation, and to develop a rational broadband policy that applies to all providers.[36] NASUCA submits that such a policy should encourage competition for broadband services at both the wholesale and retail level regardless of the underlying service provider, and protect consumers from unwarranted limitations on their ability to access Internet content, run applications, and attach equipment of their choice to the network within their homes.

2. Verizon's Request For Forbearance Is Overly Broad And Unreasonable.

The relief requested by Verizon (and the other RBOCs) is unreasonable. As many commenting parties have stated, the FCC has never before granted forbearance from Title II and Computer Inquiry rules and regulations, despite a number of requests. As noted by McLeod:

> "Since Computer I, the Commission has continued to impose the fundamental principle of the Computer Inquiry [regulations], that facilities based carriers that provided bundled information service over their telecommunications facilities provide the transmission component of that information service on a nondiscriminatory basis to information service providers. Not once in the 30 years since Computer I has the Commission deviated from that core principle even for

[36] Vonage Comments, at 4.

> carriers that were non-dominant and lacked any market power."[37]

The regulations from which Verizon seeks forbearance are not applicable only to dominant firms. As AT&T states, "Title II and *Computer Inquiry* [were] developed and nurtured to insure that all common carriers – not just dominant firms – provide their telecommunications *services* in a just, reasonable and nondiscriminatory manner."[38] Thus, Verizon's claim that it is non-dominant in the provision of mass market broadband services[39] should not control the Commission's consideration of its forbearance request for forbearance from Title II and Computer Inquiry regulation.

Indeed, Verizon recognizes, as others do, that carriers in even the most competitive markets are still subject to certain Title II regulations. In its Petition, Verizon acknowledges that long distance carriers like AT&T, MCI and Sprint are "subject to Title II,"[40] yet in a footnote describing the relaxation of regulations applicable to AT&T, it casually states that AT&T is "not subject to *many* of the regulations of Title II,"[41] and then subsequently references the elimination of section 203 tariffing requirements.[42] Yet as McLeod notes, even though it is non-dominant in the provision of interexchange services, AT&T is still regulated under the basic tenets of sections 201 and 202, and is also still subject to the Commission's

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37 McLeod BellSouth Comments, at 31. *See also,* Earthlink Comments, at 2; AT&T Comments, at 4.

38 AT&T Comments, at 3-4, emphasis in original.

39 Verizon Petition, at 3-8.

40 Id., at 11.

41 Id., at footnote 39, emphasis supplied.

42 Id.

complaint process found in sections 206-209.[43] Even the smallest interexchange carriers are still subject to the basic requirements of Title II.[44] As Vonage so aptly states, "the core principles of Title II and the Computer Inquiry rules do not become moot when a market becomes competitive."[45] Verizon has certainly failed to make a case that its broadband services warrant even less regulation than the competitive long distance industry.

The far-reaching forbearance request made by Verizon is also problematic for its lack of specificity with regard to the relevant services and geographic markets to which Title II and Computer Inquiry rules and regulations should no longer apply. As noted by Earthlink, "Verizon has not attempted to define 'broadband services' in its Petition."[46] Further, Earthlink states:

> …Verizon broadly requests forbearance from Title II regulations to the extent that they might be construed to apply to "any broadband services" offered by Verizon. The statute requires a much greater degree of precision than what Verizon has offered. Verizon's extraordinarily broad request precludes the Commission from fulfilling its statutory duty to consider forbearing with respect to "a telecommunications carrier or telecommunications service, or class of telecommunications carriers or services, in any or some of its or their geographic markets." The Commission is given no basis at all upon which it could make the factual findings necessary to support a forbearance request.[47]

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43 McLeod BellSouth Comments, at 33; *citing*, 47 U.S.C. §§ 206-209.
44 Vonage Comments, at 6.
45 Id., at 7, footnote omitted.
46 Earthlink Comments, at footnote 3.
47 Id., at 6, footnotes omitted.

McLeod agrees that Verizon has failed to identify the product and geographic markets to which its forbearance petition would apply.[48] Given that Verizon's argument for forbearance relies so heavily upon the presence of intermodal competition from cable modem service providers, NASUCA finds alarming the complete lack of data provided by Verizon in any town, city, zip code, county, state, or region in support of its request for forbearance *throughout its entire service area*. There is no data, and only one passing comment by Verizon, addressing the consumers in Verizon's region that have access solely to DSL *or* cable modem service, but not both.[49] Those consumers exist,[50] yet Verizon's Petition overlooks them entirely. As McLeod notes, the lack of market and service specific data in the Verizon Petition does not allow the analysis required to reach a finding of forbearance.[51]

Verizon's omissions speak volumes, and the comments submitted by other ILECs have done nothing to clarify or specify Verizon's request; in fact, they appear to embrace its lack of clarity. Moreover, as Earthlink posits, "with no discussion of the statutory provisions, specific services, or the geographic markets at issue, it is impossible for either the Commission or interested parties to assess the

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48 McLeod BellSouth Comments, at 8.

49 Verizon Petition at 5.

50 Vonage BellSouth Comments, at 16-17; McLeod BellSouth Comments, footnote 29, referencing *IP-Enabled Services*, WC Docket No. 04-36, Competition in the Provision of Voice over IP and IP-Enabled Services, attached to Letter to Marlene H. Dortch from Evan Leo, Counsel for BellSouth, SBC, Qwest and Verizon, (filed May 28, 2004) at A2.

51 *See,* McLeod BellSouth Comments, at 7-8.

consequences of forbearance, and for this reason the Petition is invalid on its face and should be denied."[52] NASUCA agrees.

II. CONCLUSION

NASUCA respectfully requests that the Commission deny the Petition for forbearance filed by Verizon. As NASUCA and other commenting parties have demonstrated, the Verizon Petition fails the section 160 forbearance test, so the Commission must deny Verizon's plea for "deregulatory parity" with cable modem service. Granting Verizon's Petition could result in unjust and unreasonable rates for broadband services, inflict harm on consumers of broadband services, and reduce competition for broadband services – all of which run contrary to the public interest. While each of these outcomes is individually sufficient for rejecting Verizon's Petition, together they overwhelmingly demonstrate that Verizon has failed the forbearance test.

Recent discriminatory activity against VoIP providers underscores the need for continued Title II regulation of broadband services. Rejecting Verizon's Petition is necessary to ensure that consumers have continued access to content, applications and equipment on a non-discriminatory basis as they use the Internet,

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[52] Earthlink Comments, at 6.

which in turn will allow the Internet to remain open and continue to offer great public and economic benefits.

Respectfully submitted,

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Date: March 10, 2005

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In the Matter of: Petition of the Telephone Companies for Verizon under 47 U.S.C.§ Forbearance *Computer* 160(c) from Title II and Their *Inquiry* Rules with Respect to Broadband Services
Docket No.: WC 04-440

Dear Ms. Dortch:

Enclosed for filing please find the Reply Comments of the National Association of State Utility Consumer Advocates in the above-referenced matter.

Sincerely yours,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosure

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I hereby certify that I have this day served a true copy of the foregoing document, Reply Comments of the National Association of State Utility Consumer Advocates, upon parties of record in this proceeding.

Dated this 10th day of March, 2005.

Respectfully submitted,

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